

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE COMMISSIONS
JURISDICTION OVER ELECTRIC
VEHICLE CHARGING STATIONS AND
SERVICE PROVIDERS
(FILED JUNE 11, 2019)

PSC DOCKET NO. 19-0377

INITIAL WRITTEN COMMENTS OF TESLA, INC.

September 25, 2019

Tesla, Inc. (“Tesla”) hereby submits initial comments to the Public Service Commission (“Commission”) in Docket No. 19-0377, the Matter of the Commissions Jurisdiction Over Electric Vehicle Charging Stations and Service Providers. Tesla appreciates the Commission taking up this important matter and for the opportunity to participate. Clarifying whether the Commission has jurisdiction over electric vehicle charging stations is critically important at this juncture for the electric vehicle (“EV”) and charging industries.

EV adoption has steadily increased over the past several years. The availability of charging is essential for EV sales and for EV drivers to confidently travel. Regulatory certainty that charging operators are not public utilities or energy suppliers can help drive continued investment in charging services throughout Delaware. A determination to the contrary, that charging providers are public utilities or energy suppliers, would have a profound negative impact on electric vehicle charging operators, property owners and businesses that host charging stations, and ultimately EV drivers that depend on the availability of charging services. Regulation of charging operators as public utilities or energy suppliers would be unprecedented in North America and is *not* in the public interest.

Tesla submits that charging operators are not public utilities or energy suppliers as defined by Delaware Statute. In the sections below, we provide technical background out Tesla's charging networks, and respond to questions raised in Exhibit 2 of Hearing Examiner Glenn C. Kenton's Order 9458 filed August 29, 2019.

Introduction to Tesla

Tesla's mission is to accelerate the transition to sustainable energy through the development of all-electric vehicles and clean energy products including photovoltaic solar and battery storage. Tesla is headquartered in Palo Alto, and all Tesla vehicles are currently manufactured in Fremont, CA. Tesla's vehicle line-up includes the Model S sedan, Model X crossover vehicle, and Model 3 sedan. The vehicles have all-electric range of up to 370 miles per charge, and industry leading performance and safety ratings. In 2018, Tesla delivered nearly 250,000 vehicles globally. Since the company's inception, it has delivered more than 700,000 all-electric vehicles. In the coming years, Tesla is planning to launch the Model Y crossover vehicle, a Roadster sports car, and a Class 8 Semi truck.

Tesla has also made significant investments in charging stations to support the transition to electric transportation. Tesla owns and operates an extensive Supercharger network of direct current fast chargers ("Superchargers"). Superchargers stations are conveniently located near desirable amenities like restaurants, shops and WiFi hot spots. Each station contains multiple Superchargers to get customers back on the road quickly. Superchargers are currently only available to Tesla vehicles. Tesla has provided promotions that offer free use of Superchargers in order to incentivize the purchase of the vehicle. For Tesla owners that pay to use Superchargers in Delaware, they are billed about 26 cents per minute when the charge rate exceeds 60 kW, and 13

cents per minute when the charge rate is below 60 kW. The Supercharger network is not a profit center for the company, nor is it intended to be.

While Tesla owns and operates the Supercharger equipment and is the utility customer of record, it does not own the underlying property on which the stations are located. Instead, Tesla partners with businesses, such as convenience stores and shopping centers, to host Superchargers on their property.

The Tesla Supercharger network is extensive and designed to provide customers a seamless and convenient charging experience. Globally, there are more than 1,600 Supercharger stations and over 14,000 total Supercharger charging stalls. There are currently four Tesla Supercharger locations in Delaware: an 8-stall site at a Wawa in Claymont, a 12-stall location at the Delaware Welcome Center in Newark, an 8-stall site at a Wawa in Dover, and an 8-stall location at a Wawa in Lewes. Each of the Superchargers is served by Delmarva Power & Light. Tesla also contracts with an electric supplier for generation service in Delaware and other restructured markets.

Currently, the Supercharger network is primarily composed of two types of customer facing hardware. The first are stations often referred to as V2 Superchargers, which currently operate up to 150 kW per charge stall. V2 Superchargers can provide about 200 miles of range in as little as 30 minutes.

The second are stations typically referred to as Urban Superchargers because of their compact design with reduced clearance requirements. Urban Superchargers can deliver operate up to 75 kW per stall. For both of the aforementioned applications, two charge stalls are connected to a single charging cabinet capable of 150 kW of direct current output, and the two stalls share the power. For example, an 8 stall V2 Supercharger station has a maximum DC output of 600 kW (4 charging cabinets multiplied by 150 kW per cabinet).

Tesla recently introduced a V3 Supercharger product that features a 1 MW power cabinet that supports up to 250 kW charge rates per car. At this rate, a Model 3 can recover about 75 miles of charge in 5 minutes. We expect a customer's time charging to be cut by 50 percent to about 15 minutes on a V3 Supercharger. We are beginning to deploy our first V3 Supercharger sites, with deployments ramping through the remainder of the year and future.

Tesla also has an extensive publicly accessible Level 2 "Destination Charging" network. Level 2 charging is on 208/240 volt, alternating current circuits and can provide about 25-50 miles of range per hour. Destination Chargers are typically located at hotels, restaurants, and shopping centers around the country. There are nearly 27,000 Destination Chargers deployed globally. There are seven Destination Charging locations in Delaware, with a total of 11 Tesla Destination Chargers.

Unlike the Supercharger network, Tesla does not own Destination Chargers. Instead, Tesla works with businesses and property owners to install the charging equipment, and the site host owns the equipment and pays for electricity while Tesla markets the chargers to drivers. Use of Destination Chargers is free.

1. Are private entities and/or public agencies, that are not otherwise regulated by the Commission, but own and/or operate electric vehicle charging stations in Delaware for use by the public, "public utilities" under 26 Del.C. § 102(2)?

Private entities and public agencies that offer charging services to electric vehicle drivers are *not* public utilities as defined by Delaware Statute, nor are they operating as public utilities in a practical sense. "Public utility" is defined in 26 Del.C. § 102(2) as "every individual, partnership, association, corporation, joint stock company, agency or department of the State or any association

of individuals engaged in the prosecution in common of a productive enterprise...that now operates or hereafter may operate for public use within this State...any... electric... electric transmission by other than a public utility over which the Commission has no supervisory or regulatory jurisdiction pursuant to § 202(a) or (g) of this title... service, system, plant or equipment.” Given the broad definition of “public utility”, 26 Del.C. § 102(2) cannot be read alone when contemplating whether entities owning and operating charging stations are acting as public utilities. Other Title 26 statutory provisions related to the rights, responsibilities, and characteristics of public utilities make it clear that electric vehicle charging is not contemplated within the public utility legal definition because those provisions could not physically apply to electric vehicle charging stations. The plain language of Title 26 provisions is not to regulate charging stations or other customer-sited activities as public utilities.

EV charging owners/operators do not have exclusive territories

Entities that provide EV charging services cannot, and do not, reasonably meet the requirements of public utilities as set forth in other sections of Delaware Code, including 26 Del. C. § 203B(a) and § 203B(g) which state that:

“Subject to the provisions of § 202 of this title, the Commission shall, upon notice and after hearing, **establish boundaries throughout the State within which public utilities providing retail electric service shall have the obligation and authority to provide retail electric service...**” (emphasis added). 26 Del. C. § 203B(a)

“...[E]ach electric distribution company **shall have the exclusive right to furnish transmission and distribution services to all electricity-consuming facilities** located within its service territory...” (emphasis added). 26 Del. C. § 203B(g)

Establishing exclusive service territories for public EV charging providers would impede development, limit customer choice of EV charging services, remove competition and hinder innovation in electric vehicle charging. Exclusive territories would be unreasonable and would not serve the public interest. EV charging stations serve a limited number of consumers that have invested in electric vehicles, including consumers that reside in other States but happen to drive and charge their vehicles in Delaware. Moreover, charging operators are not equipped to provide electricity service to all facilities. For example, assuming an EV charging provider's "service territory" is a parking lot and adjacent property housing charging equipment, the provider would be obligated to provide retail electric service to a customer that chooses to build a store in the parking lot. The equipment EV charging providers operate can only charge electric vehicles. Customers cannot plug other devices, equipment or facilities into charging stations.

EV charging owners/operators are utility customers

It is also critical for the Commission to consider the practical delineations between the equipment of a public utility, distribution services, and an end use customer as set forth in the definitions of those terms in Delaware Statute. 26 Del.C. § 102(9) refers to § 1001 of Title 26 for the definition of "distribution facilities" and "distribution services." The charging equipment at Supercharger, Destination Charging, or other public charging sites do not fit the definitions of distribution facilities or distribution services as set forth in Delaware Statute. These definitions, along with the definition of "customer", make clear that public utility territories and services end at the customer meter:

"Distribution facilities" means electric facilities located in Delaware that are owned by a public utility that operate at voltages of 34,500 volts or below and that are used to deliver

electricity, **up through and including the point of physical connection with electric facilities owned by the customer.**” (emphasis added). 26 Del. C. § 1001 (9).

“Distribution services’ means those services, including metering, relating to the delivery of electricity to a customer through distribution facilities.” 26 Del. C. § 1001(10).

“Retail electric customer’ or ‘customer’ means a purchaser of electricity for ultimate consumption and not for resale in this State, **including the owner/operator of any building or facility**, but not the occupants thereof, **that purchases and supplies electricity to the occupants of such building or facility.**” 26 Del. C. § 1001(21).

Charging equipment is downstream from the physical connection point with the public utility (i.e., Delmarva Power & Light) and is owned by the customer. As the owner and operator of Superchargers and utility customer of record, Tesla is the end-use customer. Site hosts, such as a restaurant or hotel, that own and operate Tesla Destination Chargers are also the end use customers as they are the utility customers of record.

The definition of “customer” in 26 Del. C. § 1001(21) includes a provision that deems the owner/operator of a building or facility that purchases electricity as the customer, and that the occupants of the building or facility are not the customer. For electric vehicle charging stations, the facility is the charging station and associated parking space, while the occupants of the facility are EV drivers at the parking space utilizing the facility for charging and parking services. These definitions and other sections of Delaware Statute do not support the determination that public EV charging stations are “public utilities.”

Beyond the statute language, public EV charging owners and operators are not operating as public utilities from a practical standpoint. Charging station owners operate in a competitive marketplace and customers have a variety of options to charge their EV. There are multiple public

charging service providers, and drivers also have opportunities to charge at private workplaces, at home, or at any available electrical receptacle within distance of their vehicle. Nor do charging operators have defined, exclusive territories. EV charging operators are free to work with any site host or property manager to develop charging stations. Operating in such a competitive environment is in the public interest because it enables a variety of charging business models, service providers, and continued innovation. No state or jurisdiction in North America has regulated electric vehicle charging as a public utility.

2. To the extent the Commission concludes the above-referenced entities and/or agencies are “public utilities” under 26 Del.C. § 102(2), should the Commission exercise its authority under 26 Del.C. § 201(d) to forebear from, in whole or in part, supervision and regulation of some or all of electric vehicle charging products and/or services offered by these parties?

We submit that it would be erroneous to conclude EV charging owners and operators are “public utilities” but if the Commission were to arrive at the conclusion that they are “public utilities”, the Commission should exercise its authority under 26 Del.C. § 201(d) to forbear from, *in whole*, supervision and regulation of electric vehicle charging products offered by non-utility entities. Forbearing in whole would preserve the competitive marketplace and customer choice of charging services. Regulating charging operators as public utilities would not be in the public interest because it would significantly increase site development timelines and lead to unnecessary costs, such as filing for Certificates of Public Convenience and Necessity. Small businesses, in particular, that own and operate a handful of charging stations to attract visitors to their properties would be acutely impacted because the requirements associated with utility regulation would be

an unreasonable burden. Regulation as a public utility, even in part, would also likely limit severely the availability of public charging stations in the State just as EVs are becoming more prevalent.

3. Should the Commission deem it in the public interest to forbear with respect to the above-referenced entities and/or agencies, is the Commission otherwise required to reach specific findings on the criteria enumerated in 26 Del.C. § 201 (d)(5) as incorporated in PSC Order No. 9418, and, if so, whether such findings are warranted with respect to the above-referenced parties?

If the Commission, under its own motion, determines it is in the public interest to forbear from regulation, such findings would be unnecessary. Under 26 Del.C. § 201 (d)(1), The Commission may, “upon application or **on its own motion...**” (emphasis added) forbear from regulation some or all public utility products or services in which the Commission determines that a competitive market exists. The requirements for Commission findings under 26 Del.C. § 201 (d)(5) are “in connection with **any application...** for forbearance...” (emphasis added). The statute does not require findings when the Commission makes a determination of forbearance under its own motion.

4. Are private entities and/or public agencies, that are not otherwise regulated by the Commission, but own and/or operate electric vehicle charging stations in Delaware for use by the public, “electric suppliers” under 26 Del.C. § 1001(14) and § 1012?

For the same reasons highlighted in our response to Question 1, entities that own or operate EV charging stations are not “electric suppliers” under 26 Del.C. § 1001(14) and § 1012. “Electric supplier” as defined in 26 Del.C. § 1001(14) is “a person or entity certified by the Commission

that sells electricity **to retail electric customers** utilizing the transmission and/or **distribution facilities** of a nonaffiliated electric utility...” (emphasis added). As noted previously, distribution facilities are defined in 26 Del. C. § 1001(9) as equipment owned by a public utility to deliver electricity to customers, up through and including the point of physical connection with electric facilities owned by the customer. Moreover, EV charging operators themselves are retail electric customers, while occupants of facilities (i.e., EV drivers at EV charging stations) are not retail electric customers as defined in 26 Del. C. § 1001(21).

Beyond the statute language, public EV charging owners and operators are not operating as electric suppliers from a practical standpoint. As noted previously, Tesla is itself a customer and contracts with an energy supplier for service at Delaware Superchargers.

5. To the extent the Commission concludes the above-referenced entities and/or agencies are “electric suppliers” under 26 Del.C. § 1001(14) and § 1012, should the Commission consider amendments to Title 26, Administrative Code, § 3001 Rules for Certification and Regulation of Electric Suppliers, that are more specific to those providing such electric vehicle charging services to the public? If so, please provide specific suggestions and/or a corresponding draft regulation.

We submit that it would be erroneous to conclude EV charging owners and operators are “electric suppliers”, but If the Commission were to conclude that EV charging owners and operators are “electric suppliers”, the Commission should consider amendments to Title 26, Administrative Code, § 3001. In particular the amendments should exempt EV charging stations from all regulations associated with electric suppliers. Additional regulation and requirements for EV charging providers would not be in the public interest and would be redundant with other

regulatory standards EV charging operators and other competitive enterprises are subject to in Title 6 of Delaware Code, and from the Federal Trade Commission Act.

Conclusion

EV charging operators and owners do not fit the definition of public utilities or electric suppliers as set forth in Delaware Statute, nor are they operating as public utilities or electric suppliers in a practical sense. Regulation of charging operators as public utilities or energy suppliers would be unprecedented in North America and is *not* in the public interest. Regulating charging stations as public utilities or electric suppliers would have a significant negative impact on the availability of charging, customer choice, and would stymie innovation.

Respectfully submitted,

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